Rogers Environmental Contracting, Inc. *and* Antonio Singletary. Case 4–CA–23341

November 8, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On June 7, 1996, Administrative Law Judge Lowell Goerlich issued the attached decision. The General Counsel and the Respondent filed exceptions, supporting briefs, and answering briefs, and the General Counsel filed a reply brief to the Respondent's answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

This case arises from the Respondent's failure to pay its employees on a timely basis and the interactions between the Respondent and its employees regarding this matter. The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by refusing to employ Charging Party Singletary and his fellow employee Willie McCoy because they had engaged in protected concerted activity concerning the pay problem and to discourage other employees from engaging in such activity.

The judge found that the employees had engaged in protected concerted activity when they cashed their paychecks despite the Respondent's admonition not to do so because it had insufficient funds in its account. The judge found, however, that the employees' earlier complaints in a meeting with David Rogers, the Respondent's president, did not constitute protected concerted activity because, in the judge's view, the employees reported to Rogers' office as individuals and with no intent to protest, and Rogers lacked knowledge of the concerted nature of the activity. In addition, the judge found the record unclear concerning whether the employees had subsequently sought or been refused employment with the Respondent. He therefore concluded that the General Counsel had failed to prove the complaint allegations by a preponderance of the evidence, and dismissed the complaint.

In his exceptions, the General Counsel contends that the employees engaged in protected concerted activity not only when they cashed their paychecks, but also in the earlier meeting when, upon receiving the paychecks from Rogers, they made known to him their need to cash the checks, which represented 5 weeks' wages for Singletary and 4 weeks' wages for McCoy. The General Counsel further argues that the record establishes that the employees were denied employment on the basis of these activities at a time when the Respondent employed other laborers. We find merit in these exceptions.

It is undisputed that during the course of a project involving the removal of asbestos from a building in Harrisburg, Pennsylvania, the Respondent experienced repeated difficulties in paying its employees on a timely basis. The employees were upset about not being paid, and complained to Rogers a few weeks after the project began. Rogers told the employees that they had a choice of staying to complete the project and waiting for their pay or leaving. The employees stayed on the job.

Singletary and McCoy testified that, in addition to the protests to Rogers, the employees selected representatives who conveyed their complaints to Charlie Bowser, a Pennsylvania state official. McCoy further stated that the employees did not report for work as scheduled on the two occasions when their representatives met with Bowser. Although Rogers testified that he was not aware of the meetings with Bowser, he admitted that the employees had complained to him about the failure to tender their wages to them and did not contradict McCoy's testimony concerning the work stoppages.

When the project was completed on September 15, 1994,[1] the Respondent was again unable to meet its payroll, and in fact owed some employees, including McCoy and Singletary, several weeks' pay. The Respondent issued paychecks to McCoy, Singletary, and 25 other employees in small groups at Rogers' office later in September. At that time, however, Rogers instructed the employees not to cash the checks because the Respondent's account lacked the necessary funds. Instead, Rogers suggested that the employees check with him in a week or two to learn whether they could cash the checks. When Singletary and McCoy entered Rogers' office and received their checks, along with the instruction not to cash them, Singletary responded that he needed to cash at least one check, and McCoy stated that he needed the money to pay his daughter's school tuition. Rogers refused to give the employees permission to cash the checks, and stated that if they did so they would break alliances with him and he would not offer them further work. Singletary and McCoy proceeded together to the union hall and then to the Union's bank, where they cashed all of the checks they had received from Rogers. The checks were subsequently returned for insufficient funds.

Contrary to the judge, we find that Singletary and McCoy engaged in protected concerted activity in their meeting with Rogers when they protested Rogers' instructions not to cash the paychecks he was issuing to them. As noted by the judge, the evidence does not show that Singletary and McCoy planned a protest together or approached their meeting with Rogers as des-

[1] All dates are 1994 unless otherwise indicated.

ignated representatives of their fellow employees. Indeed, it appears that they anticipated simply receiving overdue but valid paychecks for their work on a completed project, and so could not have been expected to plan concerted activity in response to a surprise refusal to tender the checks. It was only when Rogers informed them that they must wait still longer before receiving actual compensation, i.e., cash in exchange for their paychecks, that they were presented with the need to and were moved to protest the additional delay by pleading their immediate need for the money.[2] These complaints were clearly both protected and concerted.

The Board has held that ''there can be no doubt that there is no more vital term and condition of employment than one's wages, and employee complaints in this regard clearly constitute protected activity.'' *Cal-Walts, Inc.*, 258 NLRB 974, 979 (1981). In this case, Singletary and McCoy expressed complaints about the most fundamental aspect of this ''vital'' term and condition of employment, the obligation of the employer to compensate employees with a check or other instrument that will be honored for payment. Compensation for one's labor with a check that cannot be cashed is no compensation at all. Moreover, an employer, in issuing a paycheck, assumes a responsibility that the check will be honored upon deposit and cannot shift the burden to the payee to take steps to make the check good. *Ambulance Service of New Bedford,* 229 NLRB 106, 109 (1977) (employer's argument that employee should have returned dishonored check for co-endorsement rather than filing complaint in court rejected). In this case, issuance of the paychecks, already delayed by several weeks, was accompanied by instructions that the employees could not actually collect their pay for an additional 1 to 2 weeks, at which time Rogers stated that the funds in the Respondent's account would cover the checks. Thus, Singletary and McCoy's protest against these instructions was clearly protected activity under the Act.

With respect to the concerted nature of the activity, we find, contrary to the judge, that our determination is not constrained by the intent of Singletary and McCoy prior to their meeting with Rogers. In *Mike Yurosek & Son, Inc.*, 306 NLRB 1037, 1038 (1992), the Board held that ''individual action is concerted where the evidence supports a finding that the concerns expressed by the individual are [sic] logical outgrowth of the concerns expressed by the group.'' In that case, the employees had protested the employer's decision to reduce their hours to 36 per week, contending that the reduction would not allow them to complete their work. Despite their protests, the employer instructed them to punch out exactly at the designated time. Soon after, the employer told four employees to work an extra hour, but the employees, without consulting one another, punched out at the time designated by the new policy. The Board held that each employee's refusal, even though unplanned and uncoordinated with the others, constituted protected concerted activity as an outgrowth of the previous protests by the employees concerning their work hours.

Similarly, the record here demonstrates that the Respondent's repeated failure to pay its employees on a timely basis was a subject of significant mutual concern among employees who had voiced complaints by the group as early as a few weeks after the project commenced. Rogers acknowledged these complaints in his testimony, as well as his response to the employees that they could either stay on the project and wait for their pay, or work elsewhere. Further, although Rogers denied knowledge of complaints by employee representatives to Bowser, he did not contradict McCoy's testimony that the employees engaged in work stoppages on the days of these meetings. Thus, we find that the complaints expressed by Singletary and McCoy in their meeting with Rogers, although not previously planned and articulating the two employees' own financial needs, addressed the Respondent's continuing failure to pay its employees and thus grew out of and relate back to the earlier protests of the group concerning the same subject. We therefore find that the complaints constitute concerted activity by Singletary and McCoy. In addition, we find, relying on Rogers' own testimony pertaining to earlier complaints by the employees and the uncontradicted testimony concerning work stoppages, that Rogers was aware of the concerted nature of the employees' protest when he threatened not to offer them further work if they cashed their checks before receiving authorization from him.

We have determined above that Singletary and McCoy engaged in protected concerted activity in their meeting with Rogers and that the Respondent was aware of the nature of the activity. We also find, in agreement with the judge, that the conduct of Singletary and McCoy in cashing the checks was protected and concerted, and that Rogers threatened the employees that they would not be offered work by the Respondent in the future if they cashed their paychecks too soon. Based on all of these factors, we find that the General Counsel has established that the Respondent's subsequent failure to offer work to these employees was motivated by their protected concerted activity.

Because the General Counsel has established unlawful motivation, the burden shifts to the Respondent to demonstrate that it would have refused to hire these employees for subsequent projects even in the absence of the protected conduct. *Wright Line*, 251 NLRB

[2] The record does not demonstrate that Singletary and McCoy specifically informed Rogers that they intended to cash their checks, as alleged in the complaint, but rather that they wanted and needed to do so.

1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). We find that the Respondent has failed to satisfy its burden.[3]

At the hearing, the Respondent asserted that it had hired no laborers since the completion of the Harrisburg job, and that Singletary and McCoy had not sought employment with the Respondent. Rogers testified that the Respondent typically used subcontractors to provide laborers, but that it deviated from this practice for the Harrisburg job, which had required an immediate response. Rogers further testified that the Respondent had not hired laborers for subsequent projects, including its Willow Grove project. The Respondent produced a contract dated December 15 with an individual named Joseph Hill, requiring Hill to supply labor to the Respondent during an unspecified 35-day period. The Respondent also produced a document purporting to be payroll records. Rogers, however, only identified a single page of this document as a summary of paychecks issued by the Respondent in December 1995 to the employees of a subcontractor that was unable to meet its payroll. The Respondent failed to explain the daily Contractor Production Reports, as well as wage and hour reports, introduced by the General Counsel and indicating the Respondent's employment of a varying number of laborers on the Willow Grove project during the period from December 1994 to February 1995.

In these circumstances, we find that the Rogers' general denial that the Respondent employed laborers and the limited evidence produced by the Respondent are far outweighed by the General Counsel's showing, through the Respondent's own business records, that the Respondent did employ laborers following the Harrisburg project. We therefore conclude that the preponderance of the credible evidence shows that the Respondent did hire laborers after the protected concerted activity by Singletary and McCoy. In addition, we find no merit in the Respondent's contention that the General Counsel did not meet his burden because Singletary and McCoy did not apply for employment after their protected concerted activity. Any such application would have been futile in view of the threat previously directed at them by Rogers.[4]

Because the General Counsel has shown that animus against the protected concerted activities of Singletary and McCoy and a desire to discourage other employees from engaging in such activity were a motivating factor in the Respondent's refusal to give them further employment after the check cashing incidents, and because the Respondent failed to rebut that showing by establishing that it would have refused to employ the two laborers even in the absence of their protected concerted activities, we find that the Respondent violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Rogers Environmental Contracting, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By refusing to employ Antonio Singletary and Willie McCoy because they engaged in protected concerted activity and in order to discourage other employees from engaging in such activity, the Respondent violated Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent engaged in and is engaging in certain unfair labor practices within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist and take certain affirmative action necessary to effectuate the policies of the Act.

Having found that the Respondent unlawfully refused to employ Singletary and McCoy, we shall order the Respondent to offer them employment and make them whole for any losses of earnings and benefits they may have suffered as a result of the Respondent's unlawful conduct, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We leave to the compliance phase of this proceeding the determination of the extent to which the Respondent would have employed Singletary and McCoy if it had used nondiscriminatory criteria. *Ultrasystems Western Contractors*, 316 NLRB 1243 (1995); *H. B. Zachry Co.*, 319 NLRB 967 (1995) (determinations of effect of employers' refusal to consider applicants for hire left to compliance). If at the compliance phase it is determined that the Respondent would have employed Singletary and McCoy for subsequent projects, the inquiry as to the amount of backpay due these individuals will include any amounts they would have re-

[3] Chairman Gould concurs in his colleagues' findings and conclusions in this case that a violation has been established under the standards set forth in *Wright Line*. However, as he stated in his concurring opinion in *Paper Mart*, 319 NLRB 9, 12 (1995), the appropriate mode of analysis for examining causality in dual-motive cases is not *Wright Line*. In Chairman Gould's view, unlawful discrimination may be established where the General Counsel proves ''by a preponderance of evidence that an employer's adverse action against an employee because of his protected activity is based in whole or in part on antiunion animus.'' For the reasons set forth in *Paper Mart*, Chairman Gould finds that the *Wright Line* standards are relevant to the remedy fashioned by the Board. See also *Galloway School Lines*, 321 NLRB 1422 fn. 6 (1996).

[4] See *Sunland Construction*, 311 NLRB 685, 686 (1993) (actual application for employment not required because futile).

ceived on other jobs to which the Respondent would have assigned them. If at the compliance stage it is established that the Respondent would have assigned Singletary and McCoy to projects currently in progress, we shall order the Respondent to offer them immediate employment and place them in positions substantially equivalent to their former positions with the Respondent.

ORDER

The National Labor Relations Board orders that the Respondent, Rogers Environmental Contracting, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to employ Antonio Singletary and Willie McCoy because they engaged in protected concerted activity and in order to discourage other employees from engaging in such activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Antonio Singletary and Willie McCoy employment in positions substantially equivalent to their former positions, if they would currently be employed but for the Respondent's discriminatory hiring criteria.

(b) Make Antonio Singletary and Willie McCoy whole for any loss of earnings or other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Philadelphia, Pennsylvania facility copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized agent, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 13, 1994.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to employ Antonio Singletary and Willie McCoy because they engaged in protected concerted activity and in order to discourage other employees from engaging in such activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Antonio Singletary and Willie McCoy employment in positions substantially equivalent to their former positions, if they would have been currently employed but for our discriminatory hiring criteria.

WE WILL make Antonio Singletary and Willie McCoy whole for any loss of earnings or other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

ROGERS ENVIRONMENTAL CONTRACTING, INC.

Mark E. Arbesfeld, Esq., for the General Counsel.
Jordon B. Jaeger, Esq., of Philadelphia, Pennsylvania, for the Respondent.
Antonio Singletary, in propia persona, of Bridgeton, New Jersey, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LOWELL GOERLICH, Administrative Law Judge. The charge filed in this proceeding December 13, 1994, was served upon Rogers Environmental Contracting, Inc. (the Respondent) on December 14, 1994. A complaint and notice of hearing was issued on May 17, 1995. The complaint among

other things alleged that the Respondent refused to employ Antonio Singletary and Willie McCoy in violation of Section 8(a)(1) of the National Labor Relations Act (the Act).

The Respondent filed a timely answer denying that it had engaged in the unfair labor practices alleged.

The complaint came on for hearing at Philadelphia, Pennsylvania, on March 27, 1996. Each party was afforded a full opportunity to be heard, argue orally on the record, to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.

FINDINGS OF FACT, CONCLUSIONS, AND REASONS THEREFOR[1]

I. THE BUSINESS OF THE RESPONDENT

At all material times, Respondent, a Pennsylvania corporation with its principal office located in Philadelphia, Pennsylvania, has been engaged in performing environmental cleanup services.

During the calendar year ending December 31, 1994, Respondent, in conducting its business operations described above, provided environmental cleanup services valued in excess of $300,000 to the United States Department of Defense, an entity engaged in interstate commerce and provided services valued in excess of $50,000 to the Commonwealth of Pennsylvania, an entity engaged in interstate commerce.

Based on its operations described above Respondent has had a substantial impact on the national defense of the United States.

II. THE UNFAIR LABOR PRACTICES

The General Counsel alleges that Respondent employees Antonio Singletary and Willie McCoy ''engaged in concerted activities for the purpose of mutual aid and protection by informing David Rogers, [the Respondent's president and CEO] that they would cash their pay checks and by cashing their pay checks.''

The General Counsel offered the following evidence to support his allegation.

The Respondent was engaged in environmental cleaning. In July 1994 the Respondent took a job as a subcontractor at the transportation building in Harrisburg, Pennsylvania, removing hazardous waste and asbestos. Chris Jones was the ''lone superintendent'' on the job. At the commencement of the job Jones brought around 10 employees to Rogers for hire. These employees were hired among whom was Singletary, Jones' cousin. Later another group of employees were hired among whom was McCoy. Singletary became a working foreman. The Respondent had problems with cash flow and some of its checks did not clear. The employees protested the nonpayment of their wages, nevertheless, they continued to work. At the end of the project on September 15, 1994, employees were owed four or five paychecks. Singletary was due five paychecks and McCoy four.

Several weeks after the project was finished Jones informed the employees that they should appear at the Respondent's office to receive their paychecks. Around 27 employees appeared among whom were Singletary and McCoy. Rogers called the employees into his office in small groups where he distributed the checks. Singletary and McCoy went into the office together, Rogers gave Singletary five checks and McCoy four checks. Singletary described what occurred:

> He asked us not to cash them. I told him I had to cash one, at least one. He told me not to cash one, because he had more to lose than I did.
>
> . . . But after he told me, no, that's when I decided that I was going to cash as many as I could.
>
> Q. Did—did you ask him for permission to cash one check?
>
> A. I did.
>
> Q. Okay. And what did he say?
>
> A. He said, no, because you—I—he don't—I don't have as much to lose as he does.
>
> . . . .
>
> THE WITNESS: And he said, if you all cash any of those checks, you can't work for me any more. We're going to break alliances. I said, what do you mean, by that? He said, you can't work for me no more.
>
> . . . .
>
> A. Ah yeah, he said something about, he had to cash a check because he had to send his daughter—his daughter goes to catholic school and the people needed the money so he could register his daughter to go to school in September. . . .
>
> . . . .
>
> Q. BY MR. ARBESFELD: What did he ask you to do?
>
> A. Don't cash them—don't cash—I guess he meant, don't cash them checks until you hear from me. If you cash them checks, we'll break alliances.
>
> So, I asked him what did he mean by that. He told me I, couldn't work for him no more. . . .
>
> . . . .
>
> Q. Okay. And when you left that—when you left his office that day, did you communicate to him that you were going to cash it, or was it left unclear?
>
> A. It was clear that I couldn't cash one with his consent. And if I cashed any, that I couldn't work for him no more.
>
> Q. But you didn't tell him, I'm going to cash it?
>
> A. That was already decided when he made his decision.

McCoy described what occurred:

> A. He told us not to cash them.
>
> Q. Did he say why?
>
> A. Yes, he said, right now, he didn't have the funds for all of the checks that he had given out.
>
> . . . .
>
> And Mr. Rogers told us, listen, if—if you cash these checks now, and I done told you already not to cash them, you're going to break alliance with me.
>
> So, Mr. Tony Singletary said, what do you mean by, break alliance? And then, he told us, he's going to take care of the guys who take care of him, that bear with his situation.
>
> Said, if—if we go and cash the checks, then he can't promise us no work no more, because we're not faithful to the alliance.
>
> . . . .

[1] There being no exceptions thereto General Counsel's Motion to Correct Transcript is granted and the transcript is corrected accordingly.

. . . ''I told him I had to cash my check.''

Singletary and McCoy immediately went to the Union, Local 222, where they cashed some of the checks. The checks bounced. Oliver G. Glass, business manager for Local 222, went to Rogers' office for the purpose of collecting the proceeds of the checks. Glass testified that Rogers said:

> THE WITNESS: As I indicated, he was upset at the fact that they had cashed the checks and I believe he made it quite clear then that he did not want to employ them anymore.
>
> . . . .
>
> . . . He explained to me that he asked these guys not to cash the checks.
>
> He also told me that the guys were upset because they didn't want to go home without any money to face their wives, etc.
>
> He went into the area to the fact that he had given them the opportunity to finish the work there in Pennsylvania, wherever it was, and that opportunity wouldn't be available anymore.
>
> He didn't want to employ them anymore.
>
> . . . .
>
> A. Mr. Rogers indicated to me at that very time that inasmuch as these guys had violated his trust, he wasn't going to employ them anymore.
>
> Q. BY JUDGE GOERLICH: Violated what?
>
> THE WITNESS: His trust, period. They had an agreement together. These guys, I would assume, did not keep their part of agreement and so, therefore, he didn't intend to employ them anymore.

Neither Singletary nor McCoy applied for jobs with the Respondent after they received their checks.

The Respondent refused to pay Singletary and McCoy their per diem money. (They were to receive $25 a day.) In separate actions they collected it through the Small Claims Court.

Singletary testified that Jones told him that they ''can't go on the job because we cashed our checks.''

Conclusion and Reasons Therefor

Section 7 of the Act protects employees who engage in concerted activities for the purpose of ''mutual aid or protection.'' Concerted activity has been defined as activity which is engaged in ''on the authority of other employees, and not solely on behalf of the employee himself.'' *Meyers Industries*, 268 NLRB 493, 497 (1984).

Singletary and McCoy along with other employees appeared by invitation at the Respondent's office for the purpose of picking up checks for back wages. The credible evidence does not establish that they appeared at the Respondent's office together to protest or complain about anything. They were not in the Respondent's office of their own design. In the office they were given checks for their back wages and were told not to cash them or the Respondent would not offer them work again or words to that affect. The employees said that they needed the cash. The employees then left. Up to this point there had been no concerted activity for mutual aid or protection on the part of the employees. The Respondent's alleged threat was not uttered because the employees were engaging in concerted activities for their mutual aid and protection. Nor was the Respondent aware of any concerted activity when it threatened the employees. Cf. *Air Surrey Corp. v. NLRB*, 601 F.2d 256 (6th Cir. 1979). Singletary and McCoy entered the Respondent's office as individuals and left as individuals. Thus the Respondent may not be found to have interfered with, restrained, or coerced the employees in their right to engage in concerted activity for their mutual aid or protection. The employees were solely appearing as individuals.

Thereafter the employees together resolved to cash the checks even in the face of the Respondent's admonition. Together they went to the union hall where they presented the checks for cashing. The Union cashed the checks although the checks later bounced. What the employees did in presenting the checks for cashing at the Union was concerted activity for their mutual aid and protection. The employees were not acting solely for their own interests but were acting together. Cf. *Evan Williams Construction Co.*, 208 NLRB 15 (1973). At this point had the Respondent refused the employees employment because they had gone to the Union it would have violated Section 8(a)(1) of the Act for interfering with, restraining, and coercing the employees in their right to engage in concerted activity for their mutual aid and protection. However, the credible record is unclear as to whether the employees applied for work with the Respondent or whether the Respondent refused to hire them. Thus the General Counsel's allegation that the Respondent refused to employ Singletary and McCoy because they engaged in protected concerted activity is not sustained by a preponderance of the credible evidence.

[Recommended Order for dismissal omitted from publication.]